IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2007

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THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No. 251 of 1995

K.Loganathan . . Appellant/Plaintiff

Versus

1.Punniakotti Naicker
2.Kuppusamy Naicker . . Respondents/Defendants

Prayer: This second appeal is filed against the judgment and decree passed by the Sub Judge Kancheepuram on 26.09.94 in Pauper A.S.No.84 of 1993 confirming the Decree and Judgment passed by the learned District Munsif Kancheepuram on 14.09.92 in Pauper O.S.No.364 of 1982.

For Appellant :Mr.S.Balasubramanian
For Respondents:Mr.S.Kalyana Raman

JUDGMENT

The unsuccessful plaintiff in the Courts below is the appellant herein. The plaintiff filed a suit for a declaration that he is entitled to the entire suit property and also for a permanent injunction. The suit property is a house site with superstructure measuring 13¼th feet east-west to north-south along with backyard trees etc., in Kamakshiammankoil Sannadhi Street, Kanchipuram, bearing T.S.No.873 and D.No.60-B.

2.The case of the plaintiff is that he is the son of the second defendant Kuppusami Naiker and the first defendant, Punyakoti Naiker, is the brother of the second defendant and therefore he is the paternal uncle of the plaintiff. One Varadappa Naiker the grand father of the plaintiff had two sons namely the defendants and one daughter-Jayammal. The said Varadappa Naiker among his brother have divided many years ago and the schedule property was purchased by the said Varadappa Naiker absolutely on 06.12.1954 and the said Varadappa Naicker has been in absolute possession and enjoyment of the same. The said Varadappa Naicker, the absolute owner of the property, has executed a registered settlement deed in favour of the plaintiff on 01.11.72 out of love

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and affection and at that point of time since the plaintiff was minor, the said Varadappa Naiker has put the second defendant the father of the plaintiff in possession of the property till the plaintiff attains majority. According to the plaintiff, the settlement was given effect to and the plaintiff was put in possession after he attained majority the suit property has been assessed by the municipality in the name of the plaintiff who has paying the tax etc., However, the first defendant has applied for transfer of property tax in respect of the suit property and thereafter, the plaintiff came to know that the defendants have entered partition in December 1974 under which the first defendant was allotted the suit property. It is also the plaintiff case that pursuant to the said partition, the first defendant has not taken the possession. The plaintiff would also allege collusion between the first and second defendants. In these circumstances, the plaintiff has filed the above suit. The second defendant remained exparte throughout and the first defendant filed written statement and contested the suit.

3.According to the first defendant, the suit property was purchased from among the joint family nucleus. The settlement stated to have been executed in favour of the plaintiff on 1.12.72, has never been given effect to. As per the partition dated 19.12.74, between the first and second defendants the back portion of the suit property was allotted to the first defendant and the front portion of the suit property was allotted to the plaintiff and his father, the second defendant and the said allotment is also to the knowledge of the plaintiff. It is also the case of the first defendant that as per the said partition dated 19.12.74, the settlement has been cancelled.

4.Both the Courts below have found that when it is true that under Ex.A2 settlement deed dated 01.11.72 Varadappa Naiker has settled the property by making the plaintiff's father, the second defendant, as his guardian but at the same time, there was a partition under Ex.A7 on 09.12.74 between the said Varadappa Naiker and the defendants 1 and 2 under which the front portion of the property was allotted to the first defendant. Apart from Ex.A7, a settlement deed under Ex.A2 executed by the Varadappa Naiker 01.11.72 in favour of the plaintiff, the said Varadappa Naiker has also executed two settlement deeds one on 24.09.74 to the first defendant and another on 19.09.74 to the second defendant and the intention of the said Ex.A7 partition deed was that by the said many documents they created problem in the family. Therefore, there was a partition of the property in the presence of Panchayatdars and accordingly, the front portion of the suit property was allotted to the plaintiff and his father the second defendant and the back portion of the property was allotted to the first defendant. The courts below have also found

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that while the second defendant who was the guardian under Ex.A1 settlement deed has also agreed for the cancellation of the said settlement in the partition deed dated 09.12.74 marked as Ex.A7 as also Ex.B1 and there also the second defendant being the father of the plaintiff stood as the guardian. The courts below have also found that it was based on the said partition deed the parties have divided the properties and enjoyed peaceful possession as evidenced under Ex.B2 tax receipts apart from Exs.B4 and B5. The courts have also found on fact that the plaintiff has not enjoyed the suit property based on the settlement deed dated 01.11.72 marked as Ex.A2 and in fact, Ex.A7 partition deed dated 09.12.74 has been accepted by the parties based on which the tax receipts have been made in the name of the respective parties. The courts below have found that inasmuch as the second defendant remained exparte throughout and he has not acted against the interest of the plaintiff and in a joint family property, the plaintiff has got what he is entitled. The Courts below having found that the appellant himself has admitted that there is no settlement entered in the family have come to the conclusion that the suit for declaration was not maintainable and in that view, the Courts below held against the plaintiff. Eventhough, the learned counsel for the appellant would submit that inasmuch Ex.A2 settlement dated 1.11.72 is irrevocable and has been acted upon, under Ex.A7 or Ex.B1 partition deed, the right given to the plaintiff has been reduced to ½ share and therefore it should be treated as detrimental to the plaintiff, a perusal of the judgment of the Courts below shows that in fact the plaintiff has not acted upon the Ex.A2 settlement deed and he has given effect to Ex.A7 partition deed through his father as his guardian who is the second defendant and subsequently the properties have been divided and enjoyed by the plaintiff and the first defendant separately by mutation of records. In that view of the matter on the factual decision, when the Courts below have arrived at a conclusion that the settlement of the year 1972 has not been acted upon but on the other hand partition was effected between the parties in the year 1974, I do not think that there is any question of law much less any substantial question of law involved in this case for consideration. In view of the same, the second appeal fails and the same is dismissed. No costs.

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TO

1. The Subordinate Judge, Kancheepuram.

2. The District Munsif, kancheepuram.

3. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr. S. Balasubramanian, Advocate, SR No.15143

+ 1 cc to Mr. V. Srinivasan, Advocate, SR No.14901

Judgment
in
Second Appeal No.251 of 1995

TEJ(CO)
SR/11.4.2007

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